

Message Text

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S E C R E T SECTION 01 OF 02 GENEVA 12477

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PASS TO DOE

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TAGS: PARM US UK UR
SUBJECT: CTB NEGOTIATIONS: POLITICAL WORKING GROUP:
ANALYSIS OF COMPOSITE TEXT OF PNE PROTOCOL

CTB MESSAGE NO.297

1. SUMMARY: POLITICAL WORKING GROUP MEETINGS AUGUST 11 AND 14 RESULTED IN FULL AGREEMENT ON A COMPOSITE AD REFERENDUM TEXT OF A PROTOCOL ON NUCLEAR EXPLOSIONS FOR PEACEFUL PURPOSES (TEXT IN CTB 296). MORE THAN ANY OTHER TIME IN THE NEGOTIATIONS SO FAR, SOVIETS WERE WILLING TO CUT THROUGH ISSUES AND REACH AGREEMENTS ON TEXT PROMPTLY, DISCUSSING ALL ISSUES IN A FRANK AND STRAIGHTFORWARD MANNER. US DEL BELIEVES THAT AGREED TEXT ACHIEVES BASIC US OBJECTIVES. ARTICLE I CONTAINS CLEAR, LEGALLY BINDING BAN ON PNES, UNTIL SUCH TIME AS ARRANGEMENTS FOR CONDUCTING THEM MAY BE WORKED OUT PURSUANT TO ARTICLE II. ARTICLE II, USING NEUTRAL AND NON-PREJUDICIAL LANGUAGE, REQUIRES PARTIES MERELY TO "KEEP UNDER CONSIDERATION"

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SUBJECT OF PNE ARRANGEMENTS. THERE IS NO COMMITMENT TO REACH AGREEMENT ON PNE ARRANGEMENTS NOR ANY IMPLICATION THAT ARRANGEMENTS CAN BE WORKED OUT. THE BAN ON PNES CAN BE LIFTED ONLY THROUGH TREATY AMENDMENT, WHICH WOULD REQUIRE US APPROVAL. THIS MESSAGE REVIEWS US DEL NEGOTIATING STRATEGY, ANALYZES THE MAIN ISSUES IN THE OPERATIVE ARTICLES OF THE PROTOCOL, AND SUMMARIZES SALIENT

ASPECTS OF THE PREAMBLE. END SUMMARY.

2. US DEL NEGOTIATING STRATEGY. WHEN THE POLITICAL WORK-
ING GROUP TOOK UP THE PNE PROTOCOL SEVERAL WEEKS AGO, WE
WERE FACED WITH A SOV DEL DRAFT FROM FEBRUARY WHICH WAS
COMPLETELY UNACCEPTABLE. IT CONTAINED NO ADEQUATE LEGAL
OBLIGATIONS PROHIBITING PNES AND NUMEROUS UNBALANCED AND
PREJUDICIAL OPERATIVE AND PREAMBULAR STATEMENTS ABOUT THE
NEED TO NEGOTIATE PROCEDURES TO PERMIT PNES, THE DESIR-
ABILITY OF PNES, ETC. FACED WITH THIS SITUATION, THE US
DEL INTRODUCED AN EXTREMELY TOUGH AND SIMPLE DRAFT WITHOUT
ANY CONCESSIONS TO SOVIET SENSITIVITIES. ON RECEIVING THIS
TEXT, TIMERBAEV (USSR) ANNOUNCED THAT THE SOV DEL STOOD BY
ITS FEBRUARY DRAFT AND HAD NO NEW COMMENTS OR SUGGESTIONS.
HOWEVER, IN ORDER TO STIMULATE THE NEGOTIATIONS, TIMERBAEV
AND NEIDLE (US) ARRANGED FOR BIRCH (UK) TO INFORMALLY AND
ILLUSTRATIVELY DESCRIBE VARIOUS POSSIBLE FORMULATIONS AT
A WORKING GROUP MEETING. THIS LED TO A MEANINGFUL DIS-
CUSSION OF THE ISSUES, AND THE SOV DEL PRODUCED A NEW
DRAFT OF AUGUST 9 WHICH MOVED A LONG WAY IN OUR DIRECTION
ON SEVERAL KEY ISSUES. IN SUCCEEDING NEGOTIATIONS, WE
WERE ABLE TO FURTHER IMPROVE ON THIS DRAFT. KEY TO THIS
PROGRESS WAS GREAT IMPORTANCE WHICH THE SOVIETS ATTACHED
TO THE POSSIBILITY OF SHOE-HORNING INTO THE TEXT A
REFERENCE TO THE ESTABLISHMENT OF A MORATORIUM ON PNES --
UNDOUBTEDLY BECAUSE BREZHNEV IN A MAJOR SHIFT LAST NOVEMBER
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HAD PROPOSED THAT THERE SHOULD BE A MORATORIUM ON PNES.
THE RESULTING LEVERAGE PERMITTED US -- IN RETURN FOR
AGREEING TO THE POSSIBILITY OF A REFERENCE TO MORATORIUM --
TO PUSH THE SOVIETS FURTHER TOWARD OUR POSITIONS AND TO
REACH AGREEMENT ON LANGUAGE VERY CLOSE TO OUR PREFERRED
FORMULATIONS.

3. THE BASIC OBLIGATION. THE NATURE OF THE BASIC OBLIGA-
TION OF THE PROTOCOL IS EXPRESSED IN ARTICLE I AS A CLEAR,
LEGALLY BINDING BAN ON ALL PNES. THIS OBLIGATION LASTS AS
LONG AS THE TREATY REMAINS IN FORCE, OR UNTIL THE
ARTICLE II PROCEDURES FOR AMENDING THE TREATY ARE SATISFIED.
THE TERM "MORATORIUM" HAS BEEN RETAINED, BUT IN CONTRAST
TO THE SOVIET FEBRUARY DRAFT, WHICH ONLY CONTAINED A BRIEF
PHRASE SAYING A MORATORIUM SHALL BE ESTABLISHED, THE
PRESENT COMPOSITE TEXT NOW FULLY DEFINES THE MORATORIUM
AS A COMMITMENT TO REFRAIN FROM CAUSING, ENCOURAGING,
PERMITTING, OR IN ANY WAY PARTICIPATING IN, THE CARRYING
OUT OF PNES.

4. DURATION OF THE BAN. UNDER ARTICLE I, THE PNE BAN WILL
EXTEND UNTIL THE TREATY EXPIRES OR UNTIL SUCH TIME AS

ARRANGEMENTS FOR CONDUCTING PNES MAY BE WORKED OUT PURSUANT TO ARTICLE II OF THE PROTOCOL. SOVIET FEBRUARY LANGUAGE REFERRED TO AN "INITIAL DURATION" FOR THE PROTOCOL; THIS CONCEPT DOES NOT APPEAR IN THE COMPOSITE DRAFT. THE COMPOSITE TEXT FURTHER MEETS US INSISTENCE THAT US APPROVAL BE REQUIRED BEFORE ANY ARRANGEMENTS PERMITTING PNES COULD BE MADE EFFECTIVE.

5. COMMITMENT TO FUTURE CONSIDERATION OF PNES. ARTICLE II

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EXPRESSES THE US READINESS TO CONSIDER THE SUBJECT OF PNES IN THE FUTURE IN AN EVEN-HANDED AND OBJECTIVE FASHION. THE ARTICLE PROVIDES THAT PARTIES SHALL "KEEP UNDER CONSIDERATION THE SUBJECT OF ARRANGEMENTS FOR CONDUCTING PNES". US OBJECTIVES ARE ACHIEVED BY AVOIDING ANY IMPLICATION THAT THE PARTIES ARE OBLIGATED TO REACH AGREEMENT OR THAT EFFORTS TO REACH AGREEMENT WILL PROVE SUCCESSFUL. THE COMPOSITE TEXT IS ALSO NEUTRAL IN CALLING FOR "CONSIDERATION" OF THE SUBJECT OF PNES RATHER THAN "NEGOTIATIONS," AND IN NOT IMPLYING THAT THE DELIBERATIONS WOULD BE CONTINUOUS. THE SOVIET FEBRUARY DRAFT CONTAINED AN UNDERTAKING TO REACH AN AGREEMENT ON PNES AND ENVISAGED ONLY "A PROCEDURE" FOR CARRYING THEM OUT. THE COMPOSITE TEXT OMITTS SUCH AN UNDERTAKING, AND IT DOES NOT REFER TO A PROCEDURE BUT TO CONSIDERATION OF "ARRANGEMENTS" FOR PNES.

6. PRECLUDING MILITARY BENEFITS. SOVIET DRAFTS HAD OMITTED ANY REFERENCE TO THE NECESSITY FOR PRECLUDING MILITARY BENEFITS OF PNES, BUT AT US AND UK INSISTENCE,
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ARTICLE II NOW EXPRESSLY INCLUDES THIS ASPECT. MOREOVER, UNDER THE PRESENT FORMULATION, THE MILITARY BENEFITS QUESTION IS ONLY ONE ASPECT OF THE SUBJECT OF ARRANGEMENTS FOR PNES, AND PARTIES ARE FREE TO CONSIDER ANY OTHER ASPECTS AS WELL.

7. AMENDING THE PROTOCOL. UNDER THE COMPOSITE TEXT, THE ARRANGEMENTS FOR CONDUCTING PNES MAY BE EMBODIED IN A SPECIAL AGREEMENT OR AGREEMENTS (A PHRASE OF IMPORTANCE TO SOVIETS, TAKEN FROM ARTICLE V OF THE NPT) BUT,WHATEVER THEIR FORM, THEY CAN ONLY BE MADE EFFECTIVE BY AMENDMENT TO THE PROTOCOL. THIS REFLECTS US INSISTENCE THAT ARRANGEMENTS FOR PNES CANNOT BE MADE OPERATIONAL WITHOUT FOLLOWING THE ARTICLE V PROCEDURES FOR AMENDING THE MULTILATERAL TREATY -- A PROCESS WHICH REQUIRES EXPLICIT US APPROVAL. THE FEBRUARY SOVIET TEXT HAD NO SUCH GUARANTY -- NO REFERENCE AT ALL TO THE AMENDMENT PROCEDURE -- AND COULD HAVE BEEN TAKEN TO MEAN THAT THE OBLIGATIONS OF OTHER STATES END AUTOMATICALLY IF NUCLEAR WEAPON STATES REACHED A SPECIAL AGREEMENT.

8. TIMING OF FUTURE CONSIDERATION. THE COMPOSITE TEXT STATES THAT PARTIES SHALL KEEP PNES UNDER CONSIDERATION WITHOUT DELAY AFTER THE ENTRY INTO FORCE OF THE TREATY. UNLIKE EARLIER SOVIET EFFORTS TO REQUIRE AN "IMMEDIATE" COMMENCEMENT OF WORK ON PNES, THIS LANGUAGE WOULD FULFILL THE US OBJECTIVE OF ALLOWING A REASONABLE PERIOD OF PREPARATION. THE SOVIETS AGAIN STATED THEIR PROPOSAL THAT A TRILATERAL UNDERSTANDING BE REACHED IN THE COURSE OF THESE NEGOTIATIONS THAT WOULD SET A DATE FOR THE BEGINNING OF TRILATERAL PNE CONSIDERATIONS.

9. PARTICIPANTS IN FUTURE CONSIDERATION. THE COMPOSITE
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TEXT ALSO REFLECTS A US PREFERENCE BY OMITTING THE WORD "THE" BEFORE THE WORD "PARTIES" AT THE BEGINNING OF ARTICLE II. THIS WORDING IS CONSISTENT WITH THE US APPROACH THAT NOT ALL THE PARTIES TO THE MULTILATERAL TREATY WOULD NECESSARILY BE INVOLVED IN ALL ASPECTS OF THE CONSIDERATION OF PNES, I.E. IN ANY DISCUSSIONS INVOLVING

SENSITIVE NUCLEAR TECHNOLOGY, ESPECIALLY THOSE REGARDING THE ASPECT OF PRECLUDING MILITARY BENEFITS.

10. MAKING THE PREAMBLE BALANCED. THE US AND UK DELS ACQUIESCED IN THE SOVIET DESIRE TO DEVELOP A PREAMBLE FOR THE PROTOCOL, BUT SUCCEEDED IN DRAFTING IT IN A NEUTRAL FASHION. PARAGRAPH 1 IS A STRAIGHT REFERENCE TO ARTICLE I OF THE TREATY. PARAGRAPH 2 OF THE PREAMBLE NOW REFERS GENERALLY TO THE IMPORTANCE OF VARIOUS PEACEFUL USES OF NUCLEAR ENERGY, UNLIKE THE SOVIET FEBRUARY DRAFT WHICH REFERRED SPECIFICALLY TO THE USEFULNESS OF PNES. PARA 3 IS A NEUTRAL REFERENCE TO ARTICLE V OF THE NPT. PARAGRAPH 4 REPRESENTS A MAJOR DEPARTURE FROM EARLIER SOVIET TEXTS WHICH RECITED A NEED AND A DESIRE TO WORK OUT PROCEDURES FOR PNES. THE CURRENT PARAGRAPH 4 AVOIDS ANY DECLARATION OF PURPOSE OR INTENT TO WORK OUT ARRANGEMENTS FOR PNES, MERELY DECLARING A READINESS TO CONSIDER ARRANGEMENTS FOR PNES. PARAGRAPH 4 ALSO INCORPORATES US DEL SUGGESTION THAT PNE ARRANGEMENTS MUST BE CONSISTENT WITH THE LTBT PROHIBITION OF EXPLOSIONS WHICH CAUSE RADIOACTIVE DEBRIS TO GO BEYOND NATIONAL BOUNDARIES. FINALLY, PARAGRAPH 4 COMPLETELY OMITTS THE EARLIER SOVIET FORMULATIONS THAT AGREEMENT ON PNES SHOULD BE REACHED "AS SOON AS POSSIBLE." NEIDLE

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